

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2002-349

October 25, 2004

VERIZON NEW ENGLAND d/b/a  
VERIZON MAINE  
Request for a Waiver of the Service  
Quality Index Related to the Impact of  
Snow and Ice Storms which Struck Areas  
of Central and Southern Maine During the  
Week of January 13, 2002

ORDER

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

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**I. SUMMARY**

In this Order we deny the request by Verizon New England d/b/a Verizon Maine (Verizon) for a waiver of the reporting and calculational requirements of the Service Quality Index (SQI) of the Verizon Alternative Form of Regulation (AFOR). Verizon proposed to exclude the results of January 2002 from the calculation of the SQI for the 2001-2002 SQI year (July 2001 through June 2002). For reasons explained below, we also rescind an earlier waiver we had granted for September 2001 for the PUC Complaint Ratio metric.

**II. BACKGROUND**

Verizon has been operating under an AFOR since June 1995. As part of the current AFOR, which was implemented in the Order issued June 25, 2001 in *Maine Public Utilities Commission, Investigation into Bell Atlantic-Maine's Alternative Form of Regulation*, Docket No. 99-851, Verizon is required to meet 15 metrics related to service quality, each of which has an established benchmark. If the Company fails to meet one or more benchmarks over the course of an AFOR year (July through the following June), it is required to pay (in the form of a rebate to customers) a penalty amount for each metric whose benchmark is not met. There is no rebate mechanism for overall performance based on a composite or average of all the metrics.

The amount of the penalty is based on the severity of the deviations from the benchmarks. There is a maximum penalty amount per metric and a maximum total annual penalty. The SQI mechanism, allows the Company to seek exemptions from penalties, on a case-by-case basis, for "any major event that causes a very substantial drop in quality below the SQI and that was beyond [Verizon's] ability to anticipate." *Id.* On June 10, 2002, Verizon filed a Request for Waiver of the Service Quality Index due to the effect on the Index from snow and ice storms that struck areas of central and southern Maine during the week of January 13, 2002. Verizon failed to meet the threshold of two metrics for the year of July 2001 through June 2002: "% Troubles Not Cleared within 24 hours – Residence" and "PUC Complaint Ratio." Verizon requested

the Commission to allow the Company to exclude the results of January 2002 for all 15 metrics (whether they were supposedly affected by the storm or not) from its annual SQL calculations.<sup>1</sup>

In its Request for Waiver, Verizon asserted that after the winter storms that began on Sunday, January 13, 2002, the Company attempted to cope with the damage caused by the storms, but that a substantial number of its customers, particularly in Hancock and Penobscot Counties and in mid-coast communities, experienced extended service outage periods. Verizon stated that the number of customer trouble reports was much higher than normal, making it nearly impossible to clear trouble reports within the 24-hour benchmark in the SQL. Verizon also asserted that repair work took priority over installation activities so that the SQL metrics related to the number of missed appointments and held order delay days also experienced adverse impacts. The Company maintains that the service quality results for January 2002 are an aberration and do not accurately reflect the level of service quality Verizon normally delivers. Verizon stated that its network and its team of employees performed admirably, but the severity of the damage caused by the storms was too much for Verizon to overcome within normal operating parameters. Verizon claims that the SQL results for January 2002 were not the result of management inattention, diversion of resources or inadequate performance of its employees or systems, and that the severity of the damage caused by multiple storms made achievement of the Company's usual level of service quality impossible.

In March 2002, we opened an investigation into "the adequacy of utility services during events that interrupt electric power service, and, in particular, the adequacy of telephone service during power outages in Maine." *Public Utilities Commission, Investigation into the Adequacy of Utility Services in Maine During Power Outages*, Docket No. 2002-151, Notice of Investigation (March 26, 2002) at 1. ("2002-151 Investigation").

On October 22, 2002, in this docket, we issued an "Interim Order Suspending Processing of Case and Requiring Payment of Certain Penalty Amounts." The Interim Order directed Verizon to credit its customers with SQL rebates for below standard service performance in the two categories described above for the SQL year of July 2001 to June 2002, but also stated that Verizon should temporarily exclude the results of January 2002.<sup>2</sup> The Interim Order noted that Verizon failed to meet the benchmarks for the year in both of those categories, even if the January 2002 results were excluded, and that inclusion, or not, of the January 2002 results would affect only the amount of

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<sup>1</sup> Verizon met the annual benchmarks for the other 13 metrics. It therefore makes no difference whether the January 2002 results for those 13 metrics are excluded or not.

<sup>2</sup> With the January 2002 results excluded, the rebate amount was \$312,933 (\$259,615 for the PUC Complaint Ratio, and \$53,318 for the % Troubles Not Cleared within 24 hours – Residence).

the rebate. The order required Verizon to provide the interim rebate “as if the waiver request were granted,”<sup>3</sup> but stated that we would address Verizon’s waiver request after the Commission completed the 2002 Ice Storm investigation in Docket No. 2002-151. We emphasized that no conclusions should be drawn or inferred about our ultimate decision on the Company’s waiver request, and that the Commission would determine if the January 2002 storm were so unusual or so beyond the Company’s ability to anticipate and prepare for that a waiver from the service quality results would be warranted.

On February 11, 2004, the Hearing Examiner issued a Request for Comments that was sent to all parties in the AFOR proceeding in Docket No. 99-851. He requested that the comments address “whether the waiver should be granted, including the effect, if any, that the Commission’s decision contained in the November 23, 2003, Order in Docket No. 2002-151 (the Investigation Docket) should have on this case.” No party, including Verizon and the Public Advocate, filed comments. We did not conduct evidentiary hearings in this case. The record in the 2002-151 Investigation fully addressed all the factual issues that could be relevant to a decision in this case. We therefore rely on that record, to the extent described below, for our decision in this case.

The Commission began deliberations on this case on August 9, 2004. At that deliberative session, we considered, among other matters, the need to adjust the benchmark for the PUC Complaint Ratio metric to account for the fact that the benchmark contains 12 months of data, i.e., the number of complaints per 1000 lines filed in a twelve month period, and exclusion of any actual monthly results would necessitate a pro rata adjustment of the benchmark. Deliberations on the case were recessed in order to allow Verizon an opportunity to provide additional information about the extent to which the Company had implemented a battery replacement program for incompatible chargers at some of its remote terminal sites, and whether failure to replace all of the incompatible batteries may have contributed to extended outage durations for some customers. In the event that commercial power to a remote terminal is interrupted, batteries are supposed to keep digital loop carrier (DLC) systems operating for about eight hours under normal traffic loads, but, in June 2001, Verizon had reported that several DLCs with incompatible chargers lasted only about 30 minutes.

We also invited Verizon and other parties to provide comments about the need to adjust the SQI benchmark for the PUC Complaint Ratio metric, because that metric is one of two that are calculated on a cumulative, i.e. 12 months total, basis. The parties had no notice about this issue prior to the August 9 Deliberative Session.

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<sup>3</sup> Excluding the January 2002 results “as if the waiver request were granted” means that if the waiver ultimately were granted, no further rebate would be necessary. If, instead, we had temporarily denied the waiver request and later granted it, it would be necessary to impose a surcharge on customers.

### III. STANDARD FOR WAIVER AND STRUCTURE OF DECISION

Under the terms of the AFOR, the Commission will consider granting a waiver request if Verizon “makes a compelling demonstration that the effects of a particular significant major event should not be in the SQI for that year, because it could not be foreseen and its effects could not be anticipated.” *Public Utilities Commission, Investigation Into Regulatory Alternatives for the New England Telephone and Telegraph Company d/b/a NYNEX*, Docket No. 94-123, Order (May 15, 1995), Order at 83 (1995 AFOR Order). Thus, the 1995 AFOR Order requires the event to be “major” and “beyond [Verizon’s] ability to anticipate.” It must also be one that “causes a very substantial drop in quality below the SQI... .” Finally, the 1995 Order makes clear that it is the Company’s burden to establish that the waiver should be granted. The Company must make a “compelling demonstration” that the results caused by the “significant major event” should be excluded from the SQI.

### IV. DISCUSSION

Our review of Verizon’s SQI service results in the months before and after January 2002, together with Verizon’s failure to complete the battery replacement program, which contributed to the delays in re-establishing service to some customers, persuade us that Verizon has not made the required “compelling demonstration” for a waiver and, therefore, has not justified the exclusion of its SQI performance for January 2002.

Verizon failed to demonstrate a sufficient causal link between the Ice Storm and its failure to meet the benchmarks for the two metrics supposedly affected by the Storm. The standard for granting a waiver of an SQI result requires Verizon to prove that the “major event ... *cause[d]* a very substantial drop in quality below the SQI” (emphasis added). The storm itself was undoubtedly a contributing factor to the outages. The length of those outages, however, was a function at least in part of two factors - the loss of system power of Digital Loop Carrier units, and (due at least in part to Verizon’s failure to complete the battery replacement program) the complete failure of some of those units for an extended period. DLCs are normally are powered by the electric distribution system, but when that power is not available, they instead rely on back-up battery power. When those batteries run down, it is standard practice for local telephone companies to recharge them with portable generators or to replace the batteries. It is also standard practice for those companies to own fewer generators than the number of DLCs, so that they must move the generators around to different DLC sites. *2002-151 Investigation*, Examiner’s Report (August 29, 2003) at 10, 48-49; Tr. 7-18-02 at 98; Tr. 11-15-02 at 30-31; Declaration of Verizon witness Frank Connolly at 3-4.

Because of the battery backups, the loss of commercial power due to storm damage to the power companies’ electric distribution systems did not immediately cause loss of power to the DLCs. Customer outages occurred later, when the batteries

lost their charges and were not recharged or replaced. The 2002-151 Investigation record shows that all but one of the six independent telephone companies that were affected by the storm were able to recharge their batteries at DLC sites and had no outages due to loss of power to their DLCs. One company had a single DLC go out of service. Verizon, however, had at least 97 DLCs go out of service. Responses to ADR 1-8 and ODR 1-4, *2002-151 Investigation*.

The loss of power to Verizon's DLCs was undoubtedly aggravated by a problem that the Commission became aware of in June 2001. That problem was an incompatibility between many of the batteries that provide power to operate the units when commercial power is unavailable and their charging units, and it affected a significant number of DLC sites. The incompatibility resulted in the DLC units prematurely going out of service after commercial power was lost. In a letter sent on January 7, 2002 to Verizon Maine President Edward Dinan, Chairman Thomas Welch requested updated information about the replacement program for these batteries as well as compliance with a previously-set schedule of weekly reports. The letter noted that Verizon had identified the battery problem on August 13, 2001, following a June 19, 2001 outage in Sanford in which the batteries failed after only a half hour. The letter further expressed the Commission's concern about potential outages (including inability to access E-911 service) during upcoming winter storms.

The record in the Investigation in Docket No. 2001-151 established that as of January 2002, seven months after the DLC battery incompatibility problem was discovered, Verizon was still in the process of replacing the incompatible batteries with ones that worked properly with the on-site chargers. The battery replacement program had not been completed when the winter storm of January 2002 hit Maine. Verizon asserts that the effect of battery incompatibility was minimal, claiming that only a relatively small percentage of DLC sites in the storm-affected area still had incompatible batteries and chargers. Verizon did not, however, retain outage information on any of its *integrated* DLCs on a site-specific basis. For that reason, we cannot draw any definitive conclusions from Verizon's response, due to the limited nature of the available data. What we can say, however, is that Verizon has provided no justification for why, in seven months' time, it did not replace the batteries in all DLCs that had batteries that were not compatible with their chargers. Moreover, it is likely that, in the case of those DLCs with incompatible batteries that lost commercial power in the storm, customers served by those DLCs lost dial tone much sooner than they otherwise would have, probably within 30 minutes rather than the 8 hours for which DLC batteries normally provide power; and further that the additional restoration work required by the incompatible batteries lengthened the outage for many customers.

Verizon's waiver request is further weakened by the fact that for a number of months close in time to January 2002, its performance on the two metrics was similar to or worse than its performance in January 2002, notwithstanding the absence of major storms. The results in those other months suggest that weather may not have been the only significant cause of the results in January 2002. In several months, both during the 2001-2002 SQI year and after, the results were even worse than those for January

2002. For “% Troubles Not Cleared Within 24 Hours-Residence” (SQI benchmark: 21.1%) – the metric that Verizon had the greatest difficulty meeting – its performance in six more recent months<sup>4</sup> (as shown in boldface) was worse than the 38.6% result in January 2002:

Troubles Not Cleared Within 24 Hours - Residence

<u>2002</u>		<u>2003</u>	
<b>January</b>	<b>38.6</b>	January	22.7
February	17.1	February	30.0
March	20.3	March	30.5
April	21.0	April	23.8
May	21.2	May	27.2
June	27.2	June	32.8
July	37.1	<b>July</b>	<b>44.9</b>
August	22.5	<b>August</b>	<b>41.8</b>
September	26.0	September	37.2
October	24.6	<b>October</b>	<b>42.4</b>
<b>November</b>	<b>43.1</b>	<b>November</b>	<b>44.8</b>
December	30.8	<b>December</b>	<b>44.9</b>

For the only other metric that resulted in a penalty, the “PUC Complaint Ratio” (SQI cumulative annual benchmark: 0.52%),<sup>5</sup> the results were worse than the January 2002 result (0.06) in half of the months (both winter and non-winter) during the 2001-2002 SQI year:

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<sup>4</sup> All of the results shown in this table that were poorer than January 2002 occurred after the 2001-2002 SQI year. They are sufficiently close in time, however, that they still support our view that Verizon has failed to show that the storm and power outages, as opposed to its response to them, likely was the more significant cause of its poor results for January 2002. In addition, the results in six of the twelve months preceeding Jauary 2001 exceeded the benchmark.

<sup>5</sup> The annual PUC Complaint Ratio is calculated by adding the monthly results. As with most other metrics, annual %Troubles Not Cleared is calculated by averaging the monthly results.

PUC Complaint Ratio

	<u>2001</u>		<u>2002</u>	
July	0.06	January	0.06	
August	0.05	February	0.07	
September	0.05 <sup>6</sup>	March	0.08	
October	0.06	April	0.09	
November	0.08	May	0.07	
December	0.08	June	0.06	

These data indicate that severe weather was not the cause of Verizon's below-standard SQI performance during a substantial number of other months. The other causes in those months, whatever they were, may also have had a significant causal effect on the January 2002 results.

For all of the foregoing reasons, we find that Verizon has failed to meet its burden to make a "compelling demonstration" that the Ice Storm created "a very substantial drop below the SQI" for the two metrics in question in January 2002. Therefore, Verizon owes an additional penalty of \$53,317 for the "% Troubles Not Cleared Within 24 Hours – Residence" metric for the 2001/2002 AFOR year.

#### **V. CALCULATION OF PENALTY FOR 2001-2002 AFOR YEAR; RECISION OF WAIVER FOR SEPTEMBER 2001**

At the first deliberations on this case, we raised the question of whether, because we had excluded one month of actual data (September 2001 because of the damage to Verizon's facilities in New York as a result of the destruction of the World Trade Center), it was also necessary to exclude a month's worth of data from the PUC Complaint Ratio benchmark. Unlike the benchmarks for most other metrics, which are based on historic monthly averages, the PUC complaint ratio benchmark is equal to the number of complaints per 1000 lines received in a whole year. The benchmarks and actual results for the PUC Complaint Ratio (as well as the Major Service Outage) metrics are determined on a cumulative annual basis: these two metrics contain the full twelve months of data. Removing the actual result for any month from the annual total means there will be a mismatch between the actual performance and the benchmark, unless the benchmark is similarly adjusted to account for the reduced number of months in the actual.<sup>7</sup>

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<sup>6</sup> The September 2001 data was earlier excluded by Commission in recognition of the damage to Verizon's facilities from the destruction of the World Trade Center, but, for reasons explained below, in this Order we have rescinded that waiver for the complaint ratio metric.

<sup>7</sup> By contrast, the other metric that is at issue, "% Troubles Not Cleared in 24 Hours – Residence," is calculated as a monthly average. Excluding or including the

After reviewing the comments filed by Verizon, we find that an adjustment to the benchmark of the PUC Complaint Ratio metric (and any other metric that is calculated on a cumulative basis) would be appropriate to account for the waiver granted by the Commission to exclude the results of September 2001 from the actual calculation for the PUC Complaint Ratio. The Complaint Ratio benchmark normally contains 12 months of data (the number of complaints per 1000 lines). When we granted Verizon a waiver of all SQI results for September 2001, we excluded one month of data from Verizon's actual performance. Logically, if a month is excluded from the performance, a month's worth of the baseline data also should be excluded. Because the annual benchmark is based on a three-year average, it would be necessary to make the adjustment on a pro rata basis. Thus, the benchmark would reflect 11/12ths of the annual total, which would equal an adjusted benchmark of 0.48% instead of 0.52%. The eleven months actual SQ result (excluding September 2001) equals 0.76%. Comparing the adjusted benchmark with 11 months of actual results produces a ratio of 1.58333 and results in a penalty of \$437,500. Because Verizon has already credited \$259,615 to customers, the Company would owe an additional penalty of \$177,885 for the PUC Complaint Ratio metric.

If the actual results for September 2001 are included in the calculation, so that twelve months actual results (0.81%) are compared with the twelve-month benchmark (0.52%), the additional penalty owed by the Company is somewhat less, \$158,654. This occurs because the actual result for September (0.05%) is less than the 11-month average actual result. By adding in an amount that is less than the average actual result for eleven months, and simultaneously adding in the average amount to the benchmark, which is the denominator of the calculation, the ratio of the actual to the benchmark improves slightly (1.55768), and thus, the penalty amount is reduced.

Because this issue was introduced relatively late in the proceeding, we will rescind the waiver of the PUC Complaint ratio for September 2001, so that twelve months actual results are compared with a twelve-month benchmark. Thus, Verizon owes an additional penalty of \$158,654 for the PUC Complaint Ratio metric.

## VI. CONCLUSION

For the reasons explained above, we find that Verizon has not demonstrated sufficient grounds for us to grant its Request for Waiver of the January 2002 SQI results, and we therefore deny the request. We require Verizon to pay the penalty associated with its below-standard SQI performance in that month. We rescind the waiver that was previously granted for the results from September 2001 for the PUC Complaint Ratio. The additional SQI rebate for the January 2002 SQI results is \$211,972, consisting of \$53,318 for %Troubles Not Cleared within 24 hours –

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actual results for any month does not affect the benchmark average calculation. Although we have excluded the actual September 2001 data for that metric, there is no need to adjust the benchmark.



Residence and \$158,654 for the PUC Complaint Ratio. The total rebate for the 2001-2002 SQI year is \$524,904 (\$312,933 of which has already been paid), consisting of \$106,635 for the % Troubles Not Cleared within 24 hours – Residence and \$418,269 for the PUC Complaint Ratio.

## **VII. ORDERING PARAGRAPHS**

Therefore, we

1. DENY Verizon's Request for Waiver of the January 2002 SQI results;
2. Rescind the previously-granted Waiver of the SQI results for the PUC Complaint Ratio metric for September 2001; and,
3. ORDER Verizon immediately to begin the process of providing its customers an additional rebate of \$211,971 for its below-standard SQI service performance for January 2002.

Dated at Augusta, Maine, this 25<sup>th</sup> day of October, 2004.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Diamond  
   Reishus

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.